

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
EASTERN DIVISION

No. 4:12-CR-00032-F-1

No. 4:15-CV-00035-F

CHARLES RICHARD MOORE, JR.,     )  
  Petitioner,     )

v.     )

ORDER

UNITED STATES OF AMERICA,     )  
  Respondent.     )

This matter is before the court on Charles Richard Moore, Jr.'s Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255. In the sole claim in his § 2255 motion, Moore alleges that his attorney told him that he could not plead guilty to the Hobbs Act robbery, Count One, while taking the firearm offense, Count Two, to trial. Mot. Vacate [DE-122] at 4. According to Moore, if his attorney had properly advised him of his right to trial, he would have likely been acquitted of Count Two. *Id.*

Rule 8 of the Rules Governing Section 2255 Proceedings provides that it is within the discretion of the district court to determine whether an evidentiary hearing is warranted. The court may decide a § 2255 motion without an evidentiary hearing if "the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief." 28 U.S.C. § 2255(b).

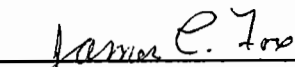
In this case, the court finds that Moore has stated a claim for ineffective assistance of counsel under *Strickland v. Washington*, 466 U.S. 668 (1984), and the Government has not

conclusively shown that Moore is not entitled to relief on his § 2255 motion.<sup>1</sup> For these reasons, the court concludes that an evidentiary hearing is necessary. Accordingly, Moore's request for an evidentiary hearing is ALLOWED, and the Clerk is DIRECTED to schedule an evidentiary hearing in this case.

Pursuant to Rule 8(c) of the Rules Governing Section 2255 Proceedings, when an evidentiary hearing is warranted, the court must appoint an attorney to represent a moving party who qualifies to have appointed counsel under 18 U.S.C. § 3006A. In this case, Moore is represented by Eugene E. Lester, III, retained counsel.

SO ORDERED.

This 7<sup>th</sup> day of December, 2015.

  
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JAMES C. FOX  
SENIOR UNITED STATES DISTRICT JUDGE

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<sup>1</sup>The Government has filed a Motion to Dismiss [DE-131] Moore's § 2255 motion pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.